UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

In the Matter of Search Warrants Executed on April 9, 2018

----------x

MICHAEL D. COHEN,

Plaintiff,

v. 18 Mag. 3161

UNITED STATES OF AMERICA,

Defendant.

----------x

New York, N.Y.
April 16, 2018
2:15 p.m.

Before:

HON. KIMBA M. WOOD,

District Judge

APPEARANCES

MCDERMOTT WILL & EMERY LLP
Attorneys for Plaintiff
BY: TODD HARRISON
JOSEPH B. EVANS
STEPHEN RYAN

ROBERT S. KHUZAMI
Acting United States Attorney for
the Southern District of New York
THOMAS A. McKAY
RACHEL A. MAIMIN
NICOLAS ROOS
Assistant United States Attorneys

Also Present:

SPEARS & IMES LLP
Attorneys for Intervenor
Donald J. Trump, President
BY: JOANNA C. HENDON
REED M. KEEFE
CHRISTOPHER W. DYSARD

ALAN FUTERFAS
Attorney for Intended Intervenor
Trump Organization

DAVIS WRIGHT TREMAINE LLP
Attorneys for ABC, Inc., New York Times Co., Associated Press, CNN, Newsday
BY: ROBERT BALIN

MICHAEL AVANATTI
Attorney for Interested Party
Stephanie Clifford a/k/a "Stormy Daniels"

THE COURT: Good afternoon, please have a seat.

THE DEPUTY CLERK: The Court calls Michael D. Cohen v. the United States of America. Counsel, state your appearances.

MR. McKAY: Tom McKay, Rachel Maimin and Nicholas Roos for the government.

MR. HARRISON: Good afternoon, your Honor. Todd Harrison and Joe Evans who you've seen in the courtroom before on behalf of Mr. Cohen. I also have and would like to introduce my client Steve Ryan who is two down from me who filed a pro hac vice --

THE COURT: Your partner?

MR. HARRISON: Yes, your Honor.

MR. RYAN: It is an honor to appear before you, your Honor.

THE COURT: That's very kind. I will grant it.

MR. HARRISON: Thank you, Judge. He may address the Court today, so thank you.

THE COURT: That's fine. It also occurs to me that the lawyers for President Trump and the Trump Organization should probably be at counsel table as well.

MS. HENDON: Should we note our appearances first, your Honor?

THE COURT: Yes. I've signed an order that you are an intervenor.

MS. HENDON: Yes, Joanna Hendon, Spears & Imes, LLP.

With me Christopher Dysard and Reed Keefe on behalf of the president.

MR. FUTERFAS: Alan Futerfas, good afternoon. We filed a letter this morning on behalf of the Trump Organization, so I wanted to let your Honor know we're here and just at least pursuant to that letter request the opportunity to intervene.

THE COURT: All right. Some time after this proceeding could you file a motion to intervene.

MR. FUTERFAS: Yes.

MS. HENDON: We're very comfortable where we are, if your Honor wouldn't mind us remaining at our seats.

THE COURT: I don't mind.

Now I'd like to turn to Mr. Harrison and ask can you answer the questions I posed at our last hearing.

MR. HARRISON: Yes, Judge. We did file a letter this morning at 10 o'clock pursuant to your Honor's direction. That's a reflection of a lot of work we did this weekend to try to narrow things down as much as possible and to answer the Court's questions. I think it answers the Court's questions pretty much all way.

I believe that it actually sort of supports our application for us doing the review or having a special master, because I think it has narrowed things down a little bit and I think hopefully will help to alleviate the Court's concerns

about any potential delay in relation to a special master.

THE COURT: Do you know the volume, roughly the volume of privileged documents that were seized?

MR. HARRISON: No, Judge, I don't. We laid out as much as we know in our letter. We indicated the privilege relationships that Mr. Cohen had as both a client and as an attorney. We don't recognize all of the items that the government seized. We don't know -- they list a hard drive, a disc, things like that, Judge, and we don't know exactly how many documents are on there or even exactly what is on those particular, these media.

THE COURT: May I interrupt you just to ask Mr. McKay if the government has a feeling for how many documents in all were seized.

MR. McKAY: How many documents in all were seized. In terms of physical documents?

THE COURT: I'll begin there.

MR. McKAY: No. In fact, because of the pendency of this motion, the investigative team has tried to be very careful about any communications with the filter team to get into particulars.

Very broadly speaking, I understand that a few or maybe as much as 10 boxes of physical documents were seized. But in terms of the real volume, it is going to be the hard drives, the electronic devices, that's where you're going to

see the real volume.

THE COURT: All right. Is it feasible for you to give duplicate sets of all you have to Mr. Cohen?

MR. McKAY: It's feasible, but there are many reasons why we oppose that request, and I'm happy to set forth those reasons now if your Honor is prepared to hear them.

THE COURT: Yes.

MR. McKAY: So, despite Mr. Cohen's counsel's sworn assertions last week that there were thousands if not millions of privileged documents, his letter this morning admits he has only three legal clients. And I think this is fatal to their motion.

THE COURT: Now, what time period are you talking about?

MR. McKAY: I'm talking about 2017-2018. I'm going to go back through the other time periods in a minute because I think this is very important --

THE COURT: Okay.

MR. McKAY: -- to discuss.

But, just to explain why I think the number and volume of materials is really critical is in their brief they say, well, Friday's hearing got away from the legally operative facts. But the number of clients and the volume of materials seized are very important. Because Mr. Cohen has premised his motion on the assertion that he is an attorney and has lots of

privileged materials, and so, for that reason, this case is like the Lynne Stewart case. But now that assertion has proven to be a little bit misleading. I think it undermines his argument and it makes this case a lot more like any white collar case in which the subject of a search has sought legal advice. Mr. Cohen sets forth he's got more attorneys of his own than he has clients.

So with respect to the facts that Mr. Cohen has now provided, I'd like to walk through them because he claims that he had numerous clients when he was practicing between 1991 and 2006 with I believe it was three different firms. But for each of those firms, Mr. Cohen's letter states that counsel does not know whether any privileged materials were seized.

Now, that should be surprising to the Court because, A, defense counsel has had access to their client all weekend, who should be able to know what is in his files and on his computer, and B, they actually have the electronic devices. Most of the devices, with a few exceptions, were imaged on site during the search. So they can open up the computer and see what, if any, privileged files were in there. But, apparently, they have not done so despite the Court's direction that they provide more information by this morning.

THE COURT: Could you just pause. I'm not sure I understood. Is it your assertion that all privileged communications are in the devices they have?

MR. McKAY: No, it's not my assertion. It may be there were some physical documents that were seized that include privileged communication. We don't know because we haven't reviewed them yet. But they do have access to their client who should be aware of what physical documents were located in his premises.

I'd also point out that with respect to everything that occurred pre-2006, all of the different practice that Mr. Cohen may have had 20, 30 years ago, all of the rider terms in the search warrants are either explicitly limited by date range to much more recent years, or, they specifically refer to conduct that is considerably more recent than 2006.

THE COURT: Remind me what the period is.

MR. McKAY: It depends on which specific subject in the rider term we're talking about. And since those are still under seal, I don't want to get into the details. But for certain subjects we asked for documents from January 1st, 2013, going forward. Other subjects aren't specifically date bound, but the events that they relate to are all sort of post 2011 I believe.

And so, to the extent that Mr. Cohen had documents on his hard drives or in his physical files that go back beyond 2006 when he was actually practicing representing clients, they're likely to be not responsive to the warrant. I'm not committing that they are, but they're likely not to be.

So if that was the concern and Mr. Cohen were actually able to assert that he had legal practice, that some of the privileged materials related to his legal practice, 2006 were included, it may be that we could do some carve out for that period of time, because it could be treated differently, given the low likelihood that such documents are actually likely to be responsive.

So then you go from 2007 to January 2017. Mr. Cohen's letter states that he was working as a counsel at the Trump Organization. But that letter does not state one way or the other whether he has retained any materials from his employment at the Trump Organization since he left there over a year ago. The Trump Organization has put in its own letter, but nowhere does it state a belief or an assertion of fact that Mr. Cohen in fact took privileged materials with him over a year and a half ago and still has them in his possession. And most corporations don't permit employees to keep their privileged client files with them after they leave.

So Cohen's failure to assert that there actually is privileged material from the Trump Organization on his devices or in his premises is pretty telling, because for those prior three firms that we just talked about, the letter affirmatively states that they don't know the answer. But the silence as to the Trump Organization is telling.

So that leaves us with January 2017 to the present

when Mr. Cohen has stated that he had only three legal clients. He hasn't even provided evidence of these relationships as the Court directed on Friday. But, more importantly he's provided no detail about the volume of communications with these clients. So it's still not clear whether his counsel had a valid basis for the assertions they made in their briefing last week.

All of that supports the argument that we've made from the outset, which is that Mr. Cohen might have a legal degree, but this investigation and the search is largely focused on his private business dealings and personal financial dealings. And that is very significant for the analysis the Court has to conduct, because this takes this far from the realm of the Lynne Stewart case. Which, again, involved a practicing criminal defense attorney, the seizure of large amounts of privileged material, the seizure of materials from other attorneys that were not under investigation, files that were related to criminal defendants. And not just that, criminal defendants being prosecuted by this office, which was extremely consequential because it meant that the filter protocol that we proposed was actually impracticable because the walled AUSAs --

THE COURT: Proposed in that case.

MR. McKAY: Correct. Because the filter protocol, the walled AUSAs might stumble upon the files of their own criminal defendants.

Lynne Stewart is very, very different from this case. That's why we've been focusing on the number of clients and the volume of privileged communications, because we think this is just the run-of-the-mill case, the kind of case where every day we have filter teams doing privilege reviews.

Now, a lot of their brief talks about their inability to disclose the identity of this third client. I can dispute whether they're correct that it's privileged. I don't think they're accurately describing the special circumstances exception. I think the ethical obligations they describe yield to a court order, and their discussion of the ethical obligations all presupposes that the client's name will be publicly disclosed, when I think the Court's directive on Friday was to do it under seal, and the government had no objection to being done under seal.

But the critical point as to the failure to disclose the third client is that Mr. Cohen's refusal to provide that client's name or a full client list or details about the representation suggests -- it's powerful evidence of how this review is likely to play out if Mr. Cohen's proposal is granted. If he can't disclose the client name, even to the Court under seal, or to the filter team under seal, how can the proposed review process that he'd like possibly work?

In his proposal, he wants to make the initial privilege call. So presumably he's going to have to produce a

privilege log so we have some indication of what things he's claiming privilege over. But without the name of the client, or any information about the representation, how can the government ever hope to push back against the inevitably overbroad claim of privilege? It is impossible.

The same is true with the special master. I think the letter suggests that Mr. Cohen would be willing to disclose this third client's name to the special master but still not to the government. So you have the same problem. Without the name of the client, we can't contest the determination, and that's actually really significant because we may know facts about an individual who may be the client in question that the special master doesn't know, and they are relevant to analysis of the privilege inquiry or crime fraud inquiry.

I can just give one example, which is that Mr. Cohen's letter states that he has some clients for whom he provides strategic advice or business consulting. Now, he hasn't put those in the realm of legal clients for now, but let's say he lists on his privilege log an e-mail with a representative of an anonymized major corporation. It may be we have subpoenaed that corporation, that we have his consulting agreement with Mr. Cohen. It may be that we've interviewed the executives of that corporation, and the executives have told us that there was no attorney-client relationship. But if they won't give us the name, they just anonymize the client, then we can't make

that same challenge to the special master. So we're going to be stuck with this overbroad claim of privilege and no way to litigate it.

This is really what Judge Jones was describing in the Grant case when she denied the request for a special master.

So, I think the continued resistance to provide the Court with facts and names is just a preview of what's going to happen if the Court grants Mr. Cohen's requested proposal. I think it indicates that he's going to continue to hide behind overbroad claims of privilege, which is going to drag out the investigation with litigation and delay. All of which is very much to the benefit of the party who is under criminal investigation.

Briefly, since the letter that was filed this morning went sort of well beyond the disclosure of the client list and added a few other arguments, I'd like to respond to those if the Court would allow.

THE COURT: Sure.

MR. McKAY: One is Mr. Cohen makes a halfhearted Fourth Amendment claim. He says we did an end run around the Fourth Amendment. But of course we got a search warrant, so that of course is a frivolous claim.

He admits that to obtain the search warrant we had to show probable cause that his premises and devices contained evidence of a crime. He said the search warrant was designed

to allow the government to obtain that material and that material only, but now the government is in possession of all of Mr. Cohen's data, a classic example of overreach. That's page 7.

But that argument completely misunderstands how searches of electronic evidence work under Rule 41 and the applicable warrants. The Second Circuit described this in the Ganias case, that because of the volume of evidence in electronic material, and the logistical issues, it is perfectly appropriate to do on-site imaging of electronic devices for later review for responsiveness to the warrant. That's expressly provided for in Rule 41, it was expressly provided for in the warrants in this case. There was nothing improper about the way the search warrants were executed in this case.

Lastly, if I may, there is one argument which seems to permeate Mr. Cohen and President Trump's submissions. And I think it is best stated at page 8 of Mr. Cohen's letter when he writes "The appointment of a special master will protect the integrity of the government's investigation from the toxic partisan politics of the day and attacks on the impartiality of the Justice Department and the U.S. Attorney's Office."

Now, there are three parties to this litigation as of right now. Only two of them have made public comments about the searches. Last Monday both Mr. Cohen and President Trump made inflammatory public statements about this case. Our

office has done no such thing. So it is improper for the parties to a litigation to attempt to drum up media attention about the case, and then turn around and cite that media attention to the Court as the basis for their requested relief. The Court shouldn't allow that.

So they may question the impartiality of the career prosecutors who would be doing the filter team review, but Judge Jones felt very differently in Grant. She wrote in her decision to approve a filter team as opposed to a special master that it was based on the expectation and presumption that the government's privilege team and the trial prosecutors will conduct themselves with integrity. She said the government is entitled to that presumption. I think this Court should reach the same result.

Mr. Cohen and President Trump both make this argument, but it is important to remember why we're here, which is that a federal magistrate judge found probable cause that there was evidence of crimes in Mr. Cohen's premises and on his devices. The judge was made well aware that this search, like many searches in white collar cases, would result in a seizure of some potentially privileged information. That's why the warrants expressly provide for the review of seized materials conducted in a manner that respects the privilege such as the filter team here.

So, when President Trump and Mr. Cohen -- well, the

only thing that makes this case unusual in any respect is that one of Mr. Cohen's clients is the president. But neither Mr. Cohen nor the president in the letter that he filed last night, which we responded to in writing and I won't repeat those arguments now, neither one of them has a persuasive reason why this case should be any different. Why the president should be entitled to a privilege review procedure that's different than the ones that are ordinarily and commonly conducted in this district.

And both Mr. Cohen and the president have explicitly invoked in their briefs the appearance of fairness in the administration of justice. But I actually think that cuts against their argument. It would not protect the public's confidence in the administration of justice to give Mr. Cohen and the president special treatment. This Court should promote the appearance of fairness by treating this case like any ordinary case in this district and approving the government's proposed use of a filter team.

THE COURT: All right. Let me ask you a question. Going back to the Stewart case, Mr. McKay, the government eventually was allowed to argue to the Court questions of privilege, so the government had to have seen the privileged documents. Mr. Khuzami was on that case.

Are you aware of what happened there?

MR. McKAY: Your Honor, I'm not specifically aware,

but I think the answer is not that the filter team was permitted to review -- I will confirm this if I'm wrong. But I think the filter team was not permitted to review the actual documents, but rather a privilege log was created by defense counsel. And based on the privilege log, which has information like the name of the communicants and the timing and some general explanation, the government was then able to contest the application based on context. And I think that is what Judge Jones describes in the Grant case as being inadequate. That without actually looking at the privileged documents, the government doesn't have the requisite context to challenge the privilege determination.

So I think it is the case that in Stewart all that was done is a privilege log. If I'm wrong about that, I will correct myself as soon as I can.

THE COURT: Okay. Good. All right.

With respect to the client's name being withheld, that is not in accord with the law in this circuit. If you have a reason for that client's name to be treated under seal, you'll tell me. Yes.

MR. RYAN: Your Honor, Steve Ryan.

With respect to that client, the client is a publicly prominent individual. The representation was legal in analysis. With regard to naming that person now, the concern was that even if we put it in a sealed proceeding right now,

that it might be released. If we could count on that not being released to the public, at this point no one would want to be associated with the fact that they were a client in this way because of the notoriety around this search warrant.

We are protecting the identity of that person, but not from the Court and not from an in camera review by the Court. And I can give you that name right now in a sealed envelope and provide it to the Court.

The client was contacted over the weekend and asked that we not disclose their name. And further, that we take an appeal if the Court was going to make that name public.

THE COURT: What is the legal ground for withholding the client's name?

MR. RYAN: The legal ground, your Honor, is, first of all, Mr. Cohen's duty to the client under the Bar codes that we've presented the Court with.

THE COURT: Well, remember that what we deal with here is federal law and Second Circuit law. This is not a diversity case.

MR. RYAN: No, no, understood. I'm talking about the Bar rules that govern Mr. Cohen's conduct in terms of releasing it.

THE COURT: Well, if I order that it be released, he has no problem with respect to his own ethics.

MR. RYAN: This is an issue, your Honor, where I would

ask the Court, if the Court's going to deny our motion for a special master, then there is no reason to disclose the name because it won't matter, and the government will go about its business and the taint team will see all of these things anyway.

If we give it to you, and I have some assurance that we're not violating that client's right not to be disclosed publicly today, then I can do this. I can write it down and put it in an envelope right now.

But this client is not associated with any of the paragraphs of the specification to my knowledge. In other words, we pared everything down over the weekend. We looked, and if it was a business client, we've dropped all of that. We really did our level best to do that. I've got this one last matter and the name, and I'm simply trying to protect the privacy of that individual, your Honor.

THE COURT: All right. If you hand the name up, I'll maintain it under seal. But it seems to me that the government, perhaps just Mr. McKay should know who it is so that he can identify whether that person had any responsive documents.

MR. BALIN: Your Honor, I apologize for interrupting. I'm a lawyer representing the press, ABC, the New York Times, Associated Press, CNN, and Newsday.

THE COURT: I think you'd better come to the podium.

MR. BALIN: I think I better, too, your Honor.

I've sat and listened until we got to the point where I realized there is a public access issue here, your Honor. I think that you got to start with two things -- I'm Robert Balin, Davis, Wright, Tremaine. Thank you very much.

One, your Honor, the Second Circuit in the very cases that are before you has said that they've never actually held that the attorney-client privilege is a higher value under the First Amendment that may rebut the presumption of access. That's number one.

Secondly, there is no credible claim that this client's mere identity is attorney-client privileged information. Counsel for the government alluded to it. Your Honor, the law on this is pretty clear, too, and it is the case, actually, the very case cited by Mr. Cohen's counsel. It's the Vingelli case. In the Vingelli case, the Court made it very clear the general rule absent special circumstances is there is no attorney-client privilege in the name of a client except for two circumstances: When naming that client would somehow identify the communications with counsel, or, if the communication is known but the source isn't, by naming that client, again, same thing, it would be invading the attorney-client communication.

Mr. Cohen's letter, which I read very closely this morning, doesn't make that argument at all. Mr. Cohen's letter

makes the argument that it would be embarrassing to be associated with what he terms a raid on a house, at a home. That argument was also expressly rejected in Vingelli. And your Honor, I must point you to the relevant paragraph because I think it says it better than me.

THE COURT: If you give me the beginning word, I'll have the paragraph in front of me.

MR. BALIN: "Disclosing," your Honor. "Disclosing."

THE COURT: I've got it. I've got it.

MR. BALIN: "Disclosing the client's name would not necessarily reveal his or her purpose in consulting Attorney Vingelli. The client may harbor concern that he or she will be tarnished by guilt by association. Fear of such a tinge does not suffice to show that revealing the client's identity would be tantamount to exposing the purposes for which the client sought legal services."

And lastly, your Honor, the rule governing the unprivileged nature of client identification implicitly accepts the fact that a client might retain or consult an attorney for numerous reasons.

Your Honor, I hardly need to remind the Court of the intense public interest in the issues that are currently before this court. I look around and I see that every other seat is occupied by a member of the press. Ultimately, however your Honor rules, right, the public is going to want to know the

basis for your Honor's ruling. That is the very nature of the First Amendment access right, so that we, the people, and the press, can monitor our institutions and have a rational basis for agreeing or disagreeing.

And I hesitate to add, your Honor, that I suspect no matter how you rule, those in the public will agree or disagree. That is what we do in society.

Finally, your Honor, I would make one last point. It was Justice Burger who I think put it well. "People in our open society do not demand infallibility from their institutions. But it is difficult for them to accept what they are prohibited from observing. " That was in Richmond Newspapers v. Virginia many years ago.

Your Honor, I see no basis for denying public access. If your Honor is going to order disclosure of this name, I see no basis for denying public access to that name.

THE COURT: Well, you're quite right that Vingelli supports your position and it's good law in this district and circuit, even though it's rather old.

I think you're right that Mr. Harrison has not met the standard for an exception to the notion that client identity, and even fee arrangements, must be revealed.

Mr. Harrison, tell me how you meet the Vingelli standard for not disclosing the name of that client.

MR. RYAN: Your Honor, let me summarize my position on

this.

THE COURT: Yes, Mr. Ryan.

MR. RYAN: First of all, had a subpoena been issued, this person's name would never have been turned over. It would have been non-responsive to any of the activity.

THE COURT: This is not a subpoena.

MR. RYAN: Second, we have a duty under Rule 1.6(15) to protect the identity of this. The client has asked their identity be protected.

THE COURT: That is not enough under Vingelli, and I point out to you that if a Court requires disclosure of the name, your client is off the hook.

MR. RYAN: Finally, I think in the future this will affect people's willingness to consult an attorney if this is the end result, the end result of having done so where they're not associated with the event, but they've chosen an attorney who has been treated in this way. And this could happen. I don't think it's a proper message.

With regard to those cases, your Honor, I don't have another case to cite for you. I have the name, I'll hand it up to the Court. But this is what -- this is what we were trying to avoid. Because if the Court's not going to grant our application, this is unnecessary to publicize this person's name.

THE COURT: Let's take one thing at a time. Under

Vingelli, you have not made out that your client meets the exception at all. And hence, I rule it must be disclosed publicly now.

MR. McKAY: Your Honor, if I may. I just briefly want to respond to this whole line of inquiry because I think it is important to emphasize that although I think the Court and counsel for the New York Times are right about the issue of disclosure of this nature, that's not why we're focused on it. I want to make sure the government's point is clear on this. That is, what Mr. Ryan just said was if this was a subpoena, this name would be not responsive to it.

It is not a subpoena, it is a search warrant. But still I believe he said earlier that this name would not be covered by any of the descriptions in the rider for the search warrant, i.e., materials relating to this individual aren't responsive to the search warrant. Now, without the name, we don't know that. Right.

So this is a perfect illustration of what is going to happen if Mr. Cohen's proposal carries the day. Is that they're going to hide behind attorney-client privilege to try to not disclose facts like this one which the Court has made very clear they have an obligation to disclose. And then use that to try to hide behind, or prevent us from reviewing documents that may well be non-privileged and responsive to the warrant.

I just pulled out the Stewart case and confirmed what I had said earlier, because I wasn't positive, I want to make clear. At page 9 of the Stewart case, the Court makes clear that although the government will not have the opportunity to review any of the documents for which a privilege has been asserted before raising objections to the special master's determinations, it then goes on to say the special master may make some calls in their favor nevertheless.

So I think what I said earlier was correct, that there was a privilege log prepared in Stewart, and the government wasn't able to actually see the underlying documents that they sought to challenge.

So what Mr. Ryan just said, that documents relating to this client will be non-responsive to the search warrant illustrates our point exactly. If they are going to continue to hide behind overbroad and incorrect claims of privilege, the process isn't going to work.

THE COURT: Give me again your point on Stewart? It was page 7?

MR. McKAY: Page 9, your Honor. Throughout the opinion there is discussion of how the defendant will prepare a privilege log. But there at the bottom of page 9 it describes how the government won't actually see the documents.

And I would point out again that that's the concern that Judge Jones raised in Grant, and that's at page 2 of

Grant. She explained that without the benefit of such review, i.e., review of content of the documents, the privilege team would be likely unable to argue, for example, that no attorney-client attached.

THE COURT: You're touching on a point that concerns me with respect to privilege logs because they often don't convey enough so that the other side can actually know what's in there, and they take a very long time to prepare. They took a very long time in Stewart. So I'm not sure that a privilege log does the trick.

MR. McKAY: Your Honor, that's exactly the concern that we're expressing, both Mr. Cohen's proposal and the special master. I don't see how either of those two proposals can work without someone preparing a privilege log. Whether it is Mr. Cohen in the first instance, or the special master. Because either way, if they're going to determine that certain documents aren't privileged, they need to find a way to communicate that to the government. And if they're not going to show the privileged documents or the potentially privileged documents to the government, the next best thing is a privilege log. It is an incredibly time-consuming process, it is not particularly effective, as Judge Jones has described in this context. And so that's why we think our proposal is the most efficient and in many ways the most protective of the privilege.

THE COURT: Mr. Harrison.

MR. HARRISON: Can I respond to Mr. McKay, your Honor?

THE COURT: Certainly.

MR. HARRISON: Thank you, Judge. Thank you. Good to see you this afternoon. Thank you very much for giving us the time over the weekend to really do properly the work that we needed to do.

And with all due respect to Mr. McKay, who is an excellent advocate, a lot of things he says just don't match up with the facts as we know them in this case. It seems like something that he prepared to say before we submitted our 10 a.m. letter. Because he says that we're trying to hide behind an overbroad exertion of the privilege.

We spent a lot of time this weekend narrowing things down. And we got it down to one person who has requested of our client that his identity remain -- not go out into the public domain. It is an understandable reaction on his part. It doesn't make a whole lot of difference to us in this case. We were willing to disclose it to the Court and to the government, which is what Mr. Ryan was saying he was willing to do. We got an instruction that we're trying to comply with from one of Mr. Cohen's clients.

So, to narrow it down to one individual out of all the individuals that Mr. Cohen has represented in the past, as we put in our 10 a.m. letter this morning, was a pretty good

effort and I think demonstrates pretty clearly we're not trying to hide behind an overbroad assertion of the privilege. Another point that Mr. McKay --

THE COURT: I just don't understand the argument that just because this undisclosed client consulted Mr. Cohen, that that is somehow embarrassing or an invasion of privacy. That's not enough under case law, and I don't understand it factually. I understand that he doesn't want his name out there. But, that's not enough under the law.

MR. HARRISON: I understand, your Honor. We understand Mr. Cohen, and frankly, derivatively, our ethical obligations to be as we laid them out of our letter of 10 a.m. But if the Court disagrees and rules against us, we'll do whatever the Court directs us to do.

THE COURT: I'm directing you to disclose the name now.

MR. RYAN: Do you want me to stand and say it or should I give you the piece of paper that you told me to write.

THE COURT: Whatever you are most comfortable with.

MR. RYAN: The client's name that is involved is Sean Hannity.

THE COURT: Thank you.

MR. HARRISON: Judge, to continue just responding to what Mr. McKay said about the various factors. Going back through Mr. McKay's comments first and then I'll turn to my

sort of more prepared remarks. The next thing --

THE COURT: May I, before we get to that, I would like to have someone on each team be thinking if I were to appoint a special master to deal with some set of the documents, can you give me four names, can each side give me four names. I haven't decided this yet, but I'd like to at least be ready for it. Go ahead.

MR. HARRISON: Thank you, your Honor. So just going back through Mr. McKay's remarks. The next thing he discussed didn't make a whole lot of sense in light of our 10 a.m. letter either. He talked about the fact that we had said in our letter that Mr. Cohen previously had strategic and business related clients. And he did. He had a number of them. And as we pointed out in our letter, we went back and reviewed that stuff, reviewed his relationship with those clients, and as we said in our letter, I think it is an arguable proposition for us and Mr. Cohen as to whether they are legal clients or not. These are often very hard questions to determine. It is a mixed issue of facts and how the relationship played out.

At the end of the day, we took a very conservative position and we told the Court and the government that we were not going to claim that they were legal clients, and we were not going to claim that those were privileged relationships that would be covered by the privilege.

So I don't really understand Mr. McKay's point in

relation to those clients that we were making an overbroad claim of privilege. We did exactly the opposite per the Court's instruction on Friday. So, that didn't make a whole lot of sense.

Mr. McKay also said a couple of times referred to the focus on the volume of materials here. But he doesn't know what the volume of materials are. It seems pretty clear to us, just based on the little we know and looking at the list of things that were seized, and I won't get into the detail, but a lot of electronic media that there is most likely a lot, a decent amount, at the very least, of documents, e-mails and other documents on there. So, there probably is a decent amount of volume.

But Mr. McKay makes a good point about the fact that there aren't -- makes a good point about the fact that we can conceivably limit this search in time and subject. And I think a special master could do that and you could certainly do that. That's something we could work with the Court and the government on.

My guess is, I don't know, Judge, because I don't know the volume of the materials, I don't know exactly what's on there. But my guess is that this could be done in a relatively short, in relatively short order and wouldn't be some lengthy review like in the Lynne Stewart case.

THE COURT: What would make this case easier than the

Lynne Stewart case? That case had three boxes of documents.

MR. HARRISON: Well, Judge, just based on what Mr. McKay said, it sounds like we can probably work out a limit on time. For instance, if he's saying that things before the time period that Mr. Cohen was at the Trump Organization starting in either late 2006 or early 2007, I keep getting that mixed up. But from before that time period is not relevant, then probably will cut off a certain number of documents.

THE COURT: I wonder if you could confer with your client to give us his best estimate of the total number of documents.

MR. HARRISON: Judge, I can tell you we don't know. We really don't know. And I think that if anybody can sort of relate to that, if all of my documents and electronic media were seized, I wouldn't know how much stuff was on there. I wouldn't necessarily know what was on there. Especially if it went back a number of years. If you seized all the documents in my office and my house, I would have not a very good idea how many documents had been seized, especially when we're talking about a lot of electronic media.

Mr. McKay also said that a couple times in the beginning of his remarks that we had sort of been misleading and misled the Court when we said there were thousands of documents. There is no doubt that there's thousands of documents. I am even more sure of that assertion today than I

was on Friday. Thousands of documents that have been seized. The next question is how many privileged documents or privileged relationships are within that seizure. And we laid that out a little bit in our 10 a.m. letter for the Court, and I think it is worth going over a little bit. Because it is more complicated than the government makes out.

Even if we just start in 2007, Judge, when Mr. Cohen started at the Trump Organization, and we ignore his many years of law firms dealing with clients before that, we still have a number of privilege relationships there. During his time at the Trump Organization, Mr. Cohen's a lawyer for the Trump Organization, we assume that there are a number of Trump Organization related documents in what was seized. Mr. Cohen was also the personal attorney for Mr. Trump during that period that he was at the Trump Organization. We assume that there are privileged documents related to that legal relationship. During that period, Mr. Cohen was also a lawyer at the Trump Organization, as we laid out, who was managing the organization's relationships with outside attorneys who were handling any number of matters around the world. Litigation, real estate issues, corporate issues. And the nature of all those relationships is really something that Mr. Cohen is, and we as his attorneys are going to have much more familiarity with in the first instance than the government will.

I can tell you, I don't believe, Judge, that in that

section where we laid out outside attorneys with whom Mr. Cohen had a legal relationship, either as a client or as a lawyer overseeing their work for his client, my guess is there are more attorney relationships like that.

While he was a lawyer at the Trump Organization, he had, he managed a number of different outside firms. I don't think, going back 10 or 10 years or over 10 years he can remember all the lawyers that he dealt with on different legal outside legal matters.

So, I think there are going to be some other issues that crop up like this that we and Mr. Cohen will recognize immediately if we are doing the review that are privileged. When you're putting on a privilege log communications between Mr. Cohen and an outside law firm that's not going -- that's not going to be much of an issue I don't think, Judge, but we're going to be best placed to do that review, either with the privilege holders, the Trump Organization, or in some instances with Mr. Trump as Joanna, Ms. Hendon will get to in a minute.

So there are a number of relationships there that are very tricky, and it won't be obvious on a review, but we'll know what they are. And I don't think that they're going to be an issue at all.

Judge, let me just go back again. This, as the Court knows, Mr. McKay said a couple time this is just a normal case

like any other white collar case. That's just not correct. We're talking about an unprecedented raid on the office and the home of the sitting President of the United States' personal attorney, during the course of which the government seized all the records, paper, electronic, whatever else, was in Mr. Cohen's home and his temporary residence and his office, without regard to whether those materials fit within the four corners of the warrant.

Now that's not unusual, Judge, and I'm not accusing the government of doing anything improper necessarily there. I don't know exactly how it was done and what happened. We may get to those issues at some other time. I'm not accusing them of doing anything wrong. I'm just saying when you execute a search warrant like that, just by its very nature, and Mr. McKay touched on this as well, you sweep up a ton of documents that are not related to the warrant, that are not related to the probable cause determination that an independent magistrate judge has signed off on.

And in the normal case, maybe some other procedure would be okay. Not in this one, Judge. The stakes are too high. Everyone is watching this case. There are partisan attacks going back and forth from this side to that side. 50 percent of America thinks that this general investigation is unfair. 50 percent think it is a great idea. I don't take sides on the issue, Judge. All I say is, the American public

is watching this, and I don't think a lot of people feel comfortable or think in their gut that it's right that the government can execute a search warrant in this case, on the sitting President of the United States, an investigation into what appears to be in his personal life, sweep up a whole bunch of documents and look at all of them without regard to what they are and without regard to whether they're pursuant to the warrant.

(Continued on next page)

MR. HARRISON: I think that this case is incredibly different.

THE COURT: I think you are overstating your problem because Mr. McKay has narrowed his approach and what he intends to look at.

MR. HARRISON: That's not clear to me, Judge, and I'm sure we can work something out with the government and with a special master and with the Court's involvement, if necessary. We do need to hammer out guidelines. Whatever course the Court picks, we certainly need to hammer out guidelines.

I'm not aware from any of the remarks that Mr. McKay made that any of his guidelines or suggested guidelines are going to solve that problem. My understanding is the government is going to look at everything. Whether it's with a taint team or some other way, they are going to look at every scrap of paper that they got through the execution of this warrant, and we don't think that's fair in the first instance, which is why we have made the request to the Court in this extraordinary case to let us do, as in the *Lynne Stewart* case, not just the initial review for privilege along with the privilege holders, who will have the best idea of what that true legal relationship was, but also for responsiveness. We think that's only fair. I think that's something that would make sense to the average American. That should be done.

And I think America, frankly, is looking to the Court

as the third coequal branch of government in this fight that's going on in the executive and legislative branch to give people a sense that things are fair, to give people a sense that this is being done impartially, to give people a sense that there is the appearance of fairness, Judge, in addition to fairness.

And I'll say again, your Honor, I'm not accusing the government of doing anything wrong legally here. I'm not. There is nothing legally wrong in the way that they executed the search warrant. All I'm saying is, it's the nature of search warrants versus the service of a subpoena to sweep up a whole bunch of stuff that is not being seized pursuant to or within the scope of an independent review by a federal judge. That's an important distinction here and it's what makes this case, in addition to the fact that it's an unprecedented raid and seizure of the sitting president's personal attorney.

Those two factors together make it combustible, Judge. That's why the press is all here. That's why everybody is looking at this case. That's why there are commentators arguing with each other on all the different news networks about what we are talking about here today. It's important in this particular case. It's different, Judge. It's important here to get it right and tell people we are doing this fairly, not that the government is doing anything wrong.

I say that again because it's an important point to make. But why not have a special master, at the very least,

your Honor? Why not send a message to people, we are going to make sure we get this right. We are going to make sure it's fair. We are going to make sure everybody think it's impartial.

Frankly, I wish the government had joined me in our application for a special master. We could have gotten through this much faster. We reached out to them last week, before we filed our papers, to see whether if they would be willing to do that, and they weren't. I think it makes sense for everybody concerned. That's our application, Judge.

THE COURT: Thank you.

Mr. McKay.

MR. McKAY: Your Honor. Where to begin. This isn't a battle between the different branches of government. Career prosecutors in the Department of Justice went to a federal magistrate judge and got a search warrant based upon a showing of probable cause that there would be evidence of crime in Michael Cohen's premises. Just because he has a powerful client doesn't mean he's entitled to different treatment. Everyone is watching this case, that may be true. That's all the more reason why the Court should follow the normal procedure for cases like this in this district.

Mr. Harrison said he doesn't take sides in the partisan political attack. No one from this side of the table has tried to drum up media attention about this case, but

Mr. Harrison's law partner did on the day the searches were executed. You heard again and again and again during Mr. Harrison's comments that they assumed there are documents from the Trump Organization. They assume there may be some documents related to other clients.

On Friday you gave defense counsel a job. Over the government's objection you gave them an adjournment until Monday to sit with their client, review the materials, which I emphasize again, they have the electronic devices. They have the materials. They have the opportunity to look and see what's on there. They didn't do it. They took the whole weekend. They didn't do it. They gave you more vague assertions about how we don't know if there are documents relating to these old clients. They said nothing about whether there are Trump Organization documents still in Mr. Cohen's possession. I think he just said he assumes that there may be. That's not a basis on which for the Court to conclude that the premise of their motion is correct.

The premise of their motion is that this is an unprecedented raid on the law office of an attorney. Because we have established -- when they filed their motion they said it wasn't thousands of documents; it was thousands, if not millions, of privileged documents. Now we learned that over the last year and a half it's of three clients.

We are not getting down into the details of the

clients' names or the amount of clients because we thought it was something interesting to find out. It is because it was the fundamental premise of their motion. They tried to put this in the *Lynne Stewart* box. And when we pressed them on those factual assertions, when the Court asked for evidence to substantiate their claims, they came up empty. They came up empty. So their motion should be denied because the factual premise for it is faulty.

They talk about making limits in time and subject matter, but this is not realistically going to work. We are happy to take reasonable proposals from defense counsel. For instance, Mr. Trump's letter asked that the government provide Mr. Cohen and his counsel with a copy of the seized materials, all of the seized materials and to identify to the President all seized materials that relate to him in any way. Mr. Trump, President Trump, one of the most talked about people on the planet, Mr. Cohen worked for him for many years. Mr. Cohen's signature line in his e-mail box used to say special counsel of the Trump Organization. Now it says personal attorney to the President. An enormous volume of Mr. Cohen's documents, the vast majority are likely to, quote, relate to President Trump in any way.

That's not what attorney-client privilege is, however. Attorney-client privilege is much, much narrower than that. By their requests now, by the things they are asking for now, in

the interest of trying to sound reasonable, trying to sound limited, they are just setting the stage for what's going to happen when the Court, if the Court orders a special master, orders their proposal, which is that they are going to take that inch and they are going to take it a mile. They are going to use that wedge that the Court has given them to chip away, chip away, make broader and broader claims of privilege and slow down this ongoing criminal investigation because it is in Mr. Cohen's interest to do so.

I cited the example of the business relationship at the outset. Not because I prepared my remarks before the letter was filed, I prepared them after the letter was filed, but it's because they made an overbroad assertion on Thursday about the number of clients that Mr. Cohen had. And when the Court held their feet to the fire they came back and they said, well, we have narrowed this. We are not asserting these business interests that he has. And that's because when the rubber meets the road, when it comes time to actually proving evidence of these attorney-client relationships, they can't do that except with respect to three clients.

So this is a preview of the type of litigation you are going to have if we find ourselves in one of their proposed procedures. They are going to start by bidding high in terms of the amount of privileged material, just as they did in these proceedings, and only once the special master or the

government, if we are able to, although we are not able to see the documents under those procedures, calls them on it and a Court calls them on it are they actually going to come back to a more reasonable interpretation of attorney-client privilege. And even today the Court had directly ordered them to disclose a name that under case law is obviously not privileged. You had to directly order them in open court. You had to drag it out of them. That's what we are going to be dealing with if the Court orders a special master. It's going to go on for months, maybe years, just like the *Lynne Stewart* case.

MR. HARRISON: Judge, very briefly to respond to that. Mr. McKay keeps talking about how bad we are going to be in the future. We are pretty good people, Judge, and I think that the 10 a.m. letter --

THE COURT: It's not that you are not good people.

MR. HARRISON: I'm joking, Judge.

THE COURT: It's that you have miscited the law at times.

Go ahead.

MR. HARRISON: Well, I don't know that we have miscited the law, Judge. But I will say that we have not slowed down anything.

Let me just explain last week and what happened. Mr. Cohen's law office and home and everything else was raided on Monday. I came onto the case on Monday night or Tuesday.

So when we appeared in front of the Court and filed our papers and appeared in front of the Court on Friday, I had been on the case for two and a half, three days maybe. We hadn't had time to sit down with our client and go over all this information about what had happened. And so when we had our discussions in court on Friday, I explained it. I don't know that I got into enough detail. I probably should have gotten into more detail about how recently I had gotten into the case. I had been in it for three days. I needed time to sit down and figure things out.

THE COURT: I am going to interrupt you for a moment. Your letter says on page 2 that Steven Ryan of your firm has been working on the special counsel's investigation, the related House of Representatives and Senate inquiries regarding, among other things, campaign finance matters. I recognize that Mr. Harrison personally just came to this, but Mr. Ryan has been in it for a while, right.

MR. RYAN: Can I just mention, your Honor, if you think of swim lanes in a pool, my swim lane was Russia and the related issues to Russia.

THE COURT: It says in the letter, as well as campaign financing --

MR. RYAN: That's only happened within the last few weeks and it's in relationship to federal campaign law issues, which is this narrow.

With all due respect, all of us started on Monday with a completely different matter. I want to say, there are five paragraphs in that attachment A that deal directly with seeking the papers of the President of the United States in possession of my client. It is not what the government has represented is about my client's personal life. There are five paragraphs there. This case is that. And we spent the weekend, frankly, narrowing the issues, taking issues off the table.

Here is what I can tell you. I know that materials for TO, for the Trump Organization, are in the materials that have been seized, so there are some materials for the Trump Organization. But the key here is a priority. The Court can order a prioritization of where a special master is needed and it's needed with respect to the papers that may contain privileged information about the President of the United States.

That's the core of why Mr. Cohen on Thursday filed this motion and why we believe it's still an important motion and, candidly, I'm glad we withdrew claims of broader amounts of privilege because we can't sustain them from the paper we have now. And we have done the right thing there and we ask that the Court look with favor on the proposal that we have made with regard to the special master.

THE COURT: I'm intrigued by your suggestion of prioritization. Do you have a proposal for what would be

prioritized?

MR. RYAN: Yes. I believe that, obviously, the issues that are of the greatest importance relate to the President of the United States and that the special master's role would be initially directed at that. And then what we could do is work with the U.S. Attorney's Office on the prioritization of other issues. Trump Org would have to be prioritized. I think the Trump Org legal issues that he has been involved in are probably frankly very easily to deal with, notwithstanding the larger volume of documents. I think that's an example of the thinking that we would like to work with.

Candidly, this man's life has been turned upside down in the past week. We were working on the Russia case for a year and, candidly, I believe the Russia case with regard to my client is a complete dry hole and now we have a completely different matter, so I will apologize if there are any mistakes that have been made there.

This Court has something that's never occurred in the history of the United States, which is, the papers related to the President of the United States have been taken from his personal attorney in a search warrant and all of them are going to be reviewed by the government, that is, the FBI and Assistant U.S. Attorneys, whether they are on a taint team or on the actual trial team. And candidly --

THE COURT: They certainly will not be given to the

trial team.

MR. RYAN: Understood. But there will always be an Assistant U.S. Attorney there. There will always be an 1811 doing it for the government and, candidly, that is not necessary. The materials are now within the government's possession. They can't be harmed. This case has come out of the blue and it can just take a few weeks to straighten this out. It won't take that long.

THE COURT: What would be straightened out in a few weeks?

MR. RYAN: We will know which materials related to the President of the United States or other people who have been swept into this don't have to be going forward because the special master can make a determination that the United States Attorney's Office can then challenge with regard to those privileged documents.

THE COURT: How soon can you produce what you believe are privileged documents relating to the President? You mentioned a few weeks. What can you do?

MR. RYAN: Your Honor, we are a large law firm. We have resources. We know how to do this. I've practiced law for 37 years. I've tried organized crime cases here in New York in the Southern District. I've argued in the Court of Appeals here. I give the Court my answer that we will do it as absolutely fast as we can with no purpose of delay in handling

this issue.

THE COURT: That's exactly what was said in *Lynne Stewart*, which gives one pause.

MR. RYAN: On the other hand, we are all officers of the court. Candidly, I don't know the volume, which is why I can't make a promise. But I'm the one who put the prioritization issue on the table for you. I'm trying to solve the problem, not perpetuate it.

THE COURT: Mr. McKay.

MR. McKAY: Your Honor, in prioritizing the President's communications, Mr. Ryan hasn't cited any legal authority why those should be prioritized over other privileged relationships Mr. Cohen may have. The other individual he put in his letter, the individual whose name he raised today, their privilege is no different from the President of the United States' privilege.

I understand the sensitivity of reviewing those documents, but without a legal basis why he should be treated differently, I don't know that their proposal makes any sense. But, more importantly, the pledge that you just got was something like, as fast as we can with no purpose of delay. That will not hold up. If there were going to be a prioritization and there were going to be some pledge, I think it should be in the form of a court order saying that the privilege log needs to be created and submitted to the special

master, if that's the way the Court goes, by date certain.

THE COURT: I know that other courts have done that and they have given law firms two to three weeks to come up with a privilege log. It's hard for me to pick a reasonable amount of time until I know the volume.

MR. McKAY: I think what would happen is, if we are going down this hypothetical, before anything could be provided to the special master and/or Mr. Cohen's counsel and/or the President's counsel, we would need to do a few things that we haven't done yet because of the pendency of this litigation. For physical documents we would have to scan them and upload onto an electronic system. With respect to hard drives that have already been imaged we need to put them onto the electronic database.

I believe there are a few electronic devices, I think just cell phones, that haven't yet been fully imaged. Those would need to be imaged and put up onto the system. There would be a little bit of logistical leg work on our hand before it could get started. The next thing that would happen would be that however we are going to define the relevant priority, we would need to come up with how you define that universe.

As I said before, the way the President has proposed to define documents that he has an interest in is any document that relates in any way to him.

THE COURT: I know that and that's problematic.

MR. McKAY: Clearly going to be overbroad. We would need to find a narrower definition or set of search terms that would govern how you narrow the field.

THE COURT: I'll be looking to Ms. Hendon to address this after Mr. McKay.

MS. HENDON: Any time, your Honor.

MR. McKAY: After you do that, we would have -- here is another thing. If you are going to do it that way, there is a separate question. Does the filter team do the uploading and sorting on the electronic database? Not reviewing documents, but making these sort of mechanical sorting into the priority review set. Or does a special master do that. I think that would pragmatically have to be done by the filter time because all of these electronic databases that we have already in place up and running, using in this case, using in other cases that work along with the FBI cart teams, electronic seizure system, that would all be greatly delayed if you put that task on a special master --

THE COURT: I agree. I would be glad to hear Mr. Harrison and Ms. Hendon on this, but I do think the government would need to be the entity that puts everything up on the system. Not that they are reading documents, but just puts them on the system that they can be numbered, identified, and given to Mr. Cohen's counsel, Ms. Hendon.

MR. McKAY: Your Honor, I think that's the logistics

that would have to happen. Once that happens, we will have a sense of the volume and then I think the Court could set a realistic deadline for the completion of a privilege log by the special master and/or defense counsel, however the mechanics are going to work out. But I emphasize again, those are the logistics that would be required to follow that proposal. We don't think that proposal is necessary or appropriate in this case.

THE COURT: Which proposal?

MR. McKAY: The proposal to narrow the field to the set of President Trump documents and have a special master do the privilege calls on those. In the *Lynne Stewart* case, as you said, it was just a few boxes of documents and it took a special master more than a year to produce a privilege log.

What we have already seen from the overbroad privilege claims that started on Thursday and the gentle walking back of those facts, Mr. Harrison said he had only been on the case for two and a half days. Then don't file a sworn affirmation asserting facts that you don't have knowledge of.

The fact that they have already made these overbroad claims is proof positive that if we follow this approach we are going to have more of the same down the road, and whatever deadline the Court sets is going to get pushed back by more and more litigation of these claims.

And so no one has yet given a basis why President

Trump's assertion of attorney-client privilege is any different from any other citizen of the United States. It's more interesting to the media, but his attorney-client privilege is the same as any other individual. Without that legal basis, we don't see a reason for the Court to carve out an exception that applies only to the President and give him a procedure that is different from the procedure that happens in many, many cases in this district.

THE COURT: How long do you think it would take for the government to put everything up on the system?

MR. McKAY: Your Honor, I think we absolutely could get -- if you did it on a rolling basis, we could get a large volume of documents up in a fairly short order, a week or two at most. There may be certain devices, for example, for which we don't have the pass code that have to be sent down to Quantico to decrypt. Those things may take longer. But the majority of evidence I think we could probably have up and ready in a week or two.

THE COURT: Ms. Hendon, do you wish to be heard?

MS. HENDON: Yes, your Honor. Thank you.

Good afternoon, your Honor. I would just like to make clear at the outset that on behalf of the President we are seeking a temporary restraining order and a preliminary injunction prohibiting the government from beginning any review of the materials seized from Mr. Cohen until such time as (1)

copies of the seized materials have been provided to Mr. Cohen (2) Mr. Cohen has provided to his client through the President's counsel, me, the subset of materials that relate to the President and (3) the President has had the opportunity to review the subset of materials for any materials that we believe are covered by the attorney-client privilege or work product protection.

THE COURT: How much time a week could your client devote to this job?

MS. HENDON: Your Honor, what I expect is that as in every discovery matter that I've ever been involved in, criminal or civil, the district court sets a schedule for each phase of the discovery matter at issue. The parties are heard on whether they think the schedule is fair and reasonable or not. The Court rules and the parties obey the Court's ruling and the parties, the clients themselves, do what is required by their counsel, who has appeared before your Honor, to abide by the Court's schedule.

THE COURT: Right. I just want to try to figure out what's a reasonable schedule.

MS. HENDON: Your Honor, we can't possibly know that today. I want to make the point that the reason we can't know that is because the government elected unilaterally, as is their right, to seek and obtain a search warrant and sweep up probably vast amounts of documents and data from the offices of

a lawyer.

So in order for me to be in a position to prepare a privilege log, two things have to happen. The seized data, some of which, somewhere throughout, contains records and evidence of the representations that Mr. Cohen has engaged in on behalf of my client. I don't know where it is. I don't know how much it is. And my client doesn't know those things either, because clients don't know what's inside their lawyer's files. Clients don't know what work product and communications are being engaged in and created every day that the lawyer is working for the client. Mr. Cohen needs to get that -- I'm afraid, because it is occurring -- all of the materials seized so that Mr. Cohen can make an assessment as to "what in here relates to the work I did for the President."

Now, that doesn't mean every piece of paper with the word Trump on it, for obvious reasons, but some amount of that material was generated, whether e-mails from Mr. Cohen to others or work product generated by Mr. Cohen, or I don't know what. I don't know what's in Mr. Cohen's law files. But some amount of that material was generated in the course of representing my client. Mr. Cohen needs to identify that material and get it to me so that I can then review it and make claims of privilege advised by my client.

Now, it may be that we overdesignate privilege. That sometimes happens in discovery matters. Not through any

intention of overdesignating privilege, but we may think something is privileged, this happens all the time, and put it on a log. And one day a Court decides you know what, I have heard your proffered privilege, Mr. President. I'm not persuaded. This document is not privileged.

There is some risk that the holder of the privilege is going to put things on his or her privilege log that the Court might one day say are not privileged. This happens all the time. But this is what has to take place here. We will create a privilege log. If your Honor orders that the privilege log contains specifics or particular information so that some of the frailties of privilege logs that your Honor alluded to earlier are absent from this case, we will follow your Honor's order, and then we provide the privilege log as we would in any litigation, civil or criminal, to the government, and the government will look at the privilege log and maybe they will call me and say, you know what, items 1 through 15 are so vague, we don't understand what they mean. And I may say, well, that's all you are getting because I think I complied with Judge Wood's order, and they may come to your Honor and say, it's too vague, and you may come back to me and say, put more information. This is what happens.

The government then comes to your Honor and says, items 1 through 15, we have reason to believe these are not privileged. Your Honor directs me to provide the documents to

you, to your Honor in camera. You hear argument from me on behalf of my client as to whether I can establish privilege, your Honor makes a decision, and I'm bound by your Honor's decision.

Now, it will take a long time here, but it's going to take a long time because of the mechanism the government chose to use in order to obtain information from Mr. Cohen. When you proceed by search warrant, you necessarily obtain vast amounts of data. It's different than proceeding by search warrant. That's fine, but the fact that this is going to take time is not to be held against the privilege holder. It's just a fact.

The privilege, your Honor, has been recognized for more than 400 years. It's the oldest of the privileges known to the common law and the most revered. Nothing less than the fair and just operation of our legal system, which is a beacon to the world and to history, depends on this privilege and without it, no client could speak freely with counsel and no attorney could competently serve their client. So, yes, privilege logs are a real pain for everybody. They always have been, they always will be. No one likes preparing them, no one likes making challenges to them. Judges don't like having to adjudicate disputes over them, but we do this day in and day out in federal courts across the country because it is the only way to vindicate the rights of the privilege holder.

Once we have from Mr. Cohen the set of materials --

again, it's not every piece of paper with the word Trump on it, but it's the e-mails he wrote and received. They might not have been with Mr. Trump. They might have been with -- I am not going to go into the scenarios that could play out in any lawyers' practice. Those are in our brief.

But what we obtain from Mr. Cohen, the communications, records, Post-it notes, whatever he finds in the materials given back to him by the government, that evidence would reflect work he did on behalf of the President. We will review that material and prepare a log and get it to the government on the schedule that your Honor orders. It's just that simple.

I agree with Mr. McKay, we are not here asking for anything special or different in this case. I'm asking for the President to have the opportunity to protect this sacred privilege that is given to litigants in contract disputes, slip-and-fall cases, dog bite cases, any case that I think any of us could name before any court.

As the holder of the attorney-client privilege over materials seized by the government from his lawyer, the President has the right, he is entitled to perform the initial review of those materials so that he may designate as privileged any he believes covered by an applicable privilege. No other procedure will ensure, as this Court must, that the President's privilege is scrupulously protected, and for the Court to do otherwise would be breaking new ground.

No court in this circuit has taken that extraordinary step under these circumstances, namely, denying the privilege holder's application to be the initial privilege reviewer of documents created in the course of his legal representation seized from his lawyer by the government pursuant to search warrants.

MR. McKAY: Your Honor --

MS. HENDON: May I continue, please. I sat for a long time.

THE COURT: He thought you were finished.

MS. HENDON: There has been a lot of discussion and commentary about the President seeking to convert a search warrant into a grand jury subpoena. I don't understand that argument. Executing a search warrant and serving a grand jury subpoena are simply two ways to gather evidence from a law office, if that's what you want. The choice by the government unilaterally to use one rather than the other does nothing to disrupt the fact that it is the client of the lawyer that owns the privilege, and he is, therefore, best place to ensure it is preserved. The government has achieved its purpose in executing the search warrants here. They have everything that they chose to take. The focus now should be on ensuring that the privilege is not invaded, which requires allowing the privilege holder to review the new privilege claims in the first instance.

The government has not articulated a single reason why they should be able to usurp the privilege holders' rights in this regard. Let's stop and think about this for a moment. For anyone in the courtroom who has ever hired a lawyer, if criminal prosecutors raided that law office and seized materials relating to your case, how would you react if you were told, you don't get to see those materials, you don't get to make the privilege call. Don't worry, the government is going to do it for you. I think what you would say is, well, I am going to federal court because I don't think a federal court in this country is going to permit that government overreach.

Not only has the government failed to articulate a single reason why they should be permitted to usurp the privilege holder's role in this process, the reasons that they have given for it betray that they are not equipped for the job.

Your Honor does not need to hear from me. If your Honor wishes to interrupt me with a question, please do. I have a few more minutes of remarks.

THE COURT: Go ahead. I want to point out that the attorney-client privilege is based in policy, not the Constitution. And as Judge Koeltl said in the *Stewart* case, it cannot stand in the face of countervailing law or strong public policy and should be strictly confined within the narrowest possible limits underlying its purpose.

MS. HENDON: I would never disagree with anything Judge Koeltl says, your Honor, but I think that analysis and that point, respectfully, is not germane today. That analysis is germane when you get my privilege log and I argue to you that something is privileged and you have a view that it's not. You may have reasons and rationales for it is not being privileged in the face of my claim.

But I don't think the fact that the privilege is rooted in policy and not the Constitution, and we have not made any constitutional arguments for that reason, I don't think the fact that the privilege is rooted in policy vitiates the argument that it is the privilege holder who owns the privilege and is best situated in the first instance to make those privileged designations. They can be rejected. They can be overruled by your Honor.

Now, the government, as I said, has given every reason to believe that they are not equipped for this job; that is, substituting for the privilege holder in making initial designations designed to vindicate the privilege. They have taken the position repeatedly that Mr. Cohen is not a real lawyer, that doesn't provide real legal services. He is more of a businessman. They have made representations about how little they expect there to be in terms of privileged material. That may be right, that may be wrong.

But any third party holding those views is not

adequately positioned to make privilege calls with respect to the President's documents. These are maybe genuinely held beliefs and they may be rooted in the investigation. But someone who holds these views and expresses them publicly cannot be counted upon by the privilege holder, the public or the Court, to adequately vindicate the policy interests in the attorney-client privilege on behalf of the President.

In addition, until today there has been a tremendous focus on speed and the need to just get going. We have to look at these things. We have every right to these things. And, again, if I were the prosecutor, that might a paramount concern to me. But that concern, too, is not consistent with the careful and deliberate and meticulous attention to whether a document might be privileged or not.

I just want to comment on a few or respond to a few of the points raised in the government's letter of this morning.

The government argues that we have misunderstood their review protocol. We don't at all. Our point is that the government should not be reviewing and it has no right to see privileged materials seized from the law office of Mr. Trump's lawyer, period. They have no right to do that and they have not asserted any authority for their right to do that. It's convenient for them to do it because they are holding all the documents, but that's not a right. Only the President holds this privilege.

The government relatedly has suggested that we provide them with search terms and filter terms to assist them as they perform their privilege review of Mr. Trump's materials. But this is such an inferior alternative to what anybody would expect, namely, that the privilege holder would review his materials and identify what he believes is privileged subject to challenge later before the judge.

We don't understand why we are hearing from the government, and this afternoon more generally, why there is all this effort, and it feels like contortions, to try to put the government in the shoes of the privilege holder so that they can do what they believe is a fair and controlled review for privilege.

The proper way is to proceed is to allow the privilege holder to do that. It is not a neutral application of privilege law that is called for here. It is the privilege holder's incentive incentivized, something the government criticized. It is an incentivized review that needs to be done to assure potentially privileged documents are identified. And if the President or his counsel have overclaimed, that is subject to challenge.

On this topic I just want to raise for the Court sort of the alternative. The government says, well, the President is incented to overclaim privilege. As I said, if that happens, there can be challenges and the Court will adjudicate

them.

THE COURT: It would appear that he already has asserted an overbroad privilege if, as Mr. McKay said and I think I recall, that every document between Mr. Trump and counsel is privileged.

MS. HENDON: I have not asserted that on behalf of my client. That's not our position. I'm unaware of any assertion of privilege by our client in this proceeding.

One minute, your Honor.

MR. McKAY: Your Honor, that was the Trump Organization.

THE COURT: Thank you.

MS. HENDON: We made no such claim. We don't know what's privileged. The government may be right, we may get these materials, look at them and find 15 documents. I just don't know. But no one has made any representations to the Court on this point at all because they are not in a position to do so.

While it's always true that the privilege holder who has the incentive to make privilege calls, because it is his privilege, he wants his information kept confidential, if he misdesignates something as privileged or can't sustain that claim, the remedy is the Court rejects the claim and the document is deemed nonprivileged and provided to the government, or whoever the adversary is in the proceeding.

By contrast, if the government, by running a host of imaginative filters and search terms because they have no knowledge, no firsthand knowledge of the underlying representation of how Mr. Cohen and --

THE COURT: They have said they are willing to work with you on that.

MS. HENDON: No amount of filters, your Honor, and search terms is going to adequately protect against the possibility that documents are missed.

THE COURT: It's a way to take a first cut so things can get moving.

MS. HENDON: What is left out of the first cut is any number of documents that may be privileged but are never cut by the search terms or the protocols, and they just go to the investigative team.

THE COURT: No, no. That's not what is proposed. They don't go to the investigative team at that point.

MS. HENDON: I'm talking about materials that are not picked up by the government's filters.

THE COURT: Whatever is picked up by the government's filters, and they think is privileged, that would not go anywhere. They would meet with you.

MS. HENDON: I understand that, your Honor. I'll just say one point on that and revert to our sort of threshold argument. If they find something they think is privileged,

they are going to meet and confer with us. My point is, the way law offices work, if you don't know how a lawyer communicates or what he was supposed to be doing for a client or what he was permitted to share with third parties --

THE COURT: That's what you can tell the government when you meet with them.

MS. HENDON: But there is no filter or search term. If I don't know what the documents say, I can't design filters or search terms --

THE COURT: You are right. It won't pick up everything, but it would be a first cut to get things moving.

MS. HENDON: If the fact is that the search terms and protocols cannot pick up anything, that leaves a risk that never picked up as part of the cut and the taint review is privileged material.

THE COURT: I think the notion is that you would have a chance to review other documents for privilege, but we would get moving on whether the search terms turn up clearly privileged documents.

MS. HENDON: I have not heard the government say that.

THE COURT: I may have it wrong.

MS. HENDON: Your Honor, all I wanted to do there was just weigh the competing risks between an overincentivized reviewer and a reviewer who doesn't have sufficient facts about the underlying investigations, the underlying representations,

was not a party to the underlying representations and has interests, you know, that are far from aligned with a privilege holder to go the review. You have to weigh those risks and I think the answer is very clear that the privilege holder should not be required to take those risks.

The threshold point in our application, your Honor, is that the government should not seek privileged documents of the President. The President should make his privilege determinations in the manner that I described and create a privilege log, as is done every day throughout federal courts in the country, the government makes its objections, and the Court rules.

There is no reason and no authority in a case like this where the law offices of the privilege holder have been searched with the Court requiring otherwise of the privilege holder. We have objected to a special master because we don't think a special master has the right to see privileged documents of the privilege holder. *Lynne Stewart* requested that and that was the relief granted.

We are not requesting that. We do not want that. We do not think a special master will adequately protect the privilege or the President. We think that the privilege holder has to do it.

THE COURT: The privilege holder can identify documents that you are going to contend are privileged, but you

don't make the decision as to whether they are privileged.

MS. HENDON: No. I didn't mean to suggest that, your Honor. I want to be very clear. The privilege holder identifies documents over which he claims privilege, and we give the privilege log to the government, they make challenges to your Honor, and your Honor rules. You will ask me to make a proffer, you will ask for facts, and you will say, I just find that these are not really privileged documents and the documents go back to the government and to the investigative team. We think that process, where you have one law firm, one client reviewing for privilege, as we do at my firm month in and month out, making a log and getting it to the government is going to be much faster than bringing in another law firm, a special master, and building in layers of process there.

It will be faster, it will be more efficient for the Court and the government to work with us on these matters. But that's a secondary concern for our client. The primary concern is, he is objecting to anyone other than himself making the initial determination of privilege, the initial claim of privilege.

The last thing I wanted to say, your Honor, before you put any questions to me or Mr. McKay speaks is that I do think that a decision for the government in this case sets the wrong precedent. The search of law offices in this country is an extraordinary event. The U.S. Attorney's Office manual which

applies to all federal prosecutors recognizes this. The search of law offices in this country should remain an extraordinary event, and a ruling for the government on the facts of this case puts that at risk.

When you execute a search warrant at a lawyer's office, you don't just get the documents, were your Honor to rule this way. It would mean the government doesn't just get the documents. They get the first crack at reviewing privileged material that at the time that you applied for the search warrant you had every expectation of finding when you executed the search. That is not something I think that anyone in this room wants to see encouraged.

THE COURT: Thank you, Ms. Hendon.

MS. HENDON: Thank you, Judge.

MR. McKAY: May I, your Honor.

THE COURT: Yes.

MR. McKAY: I think it might be helpful if I start by just clarifying what we are proposing as the filter team protocol, as there appear to be some misapprehension there.

First of all, we are not usurping the privilege holder's rights. With respect to communications between President Trump and Mr. Cohen, if there are any such communications that the filter team takes the view this is not privileged, they will not be turned over to the investigative team until we have either, A, gone to defense counsel or

Mr. Trump's counsel or Mr. Cohen's counsel and confirm that they agree with the filter team's determination, or, in extraordinary circumstances in which something about the reason why we think it's not privileged would disclose a nonpublic aspect of our investigation, in that circumstance we might go ex parte to the Court for that determination. I expect that to be an exceedingly rare, possibly even a null set, but I don't want to say it could never happen. But in almost any case the filter team would be conferring with counsel for the privilege holder and/or Mr. Cohen about the determination of the privilege.

Ms. Hendon expressed some concern that things were going to slip through the cracks if we don't have the right search terms or filter terms. As the Court pointed out, we would intend to consult with counsel for President Trump about search terms. If there are things that they can tell us that make the review better, we are happy to do it, but under no circumstances is the suggestion that everything that doesn't hit a search term just, boom, goes over the wall to the investigative team, such that if stuff doesn't hit a search term because of a pronoun, or whatever the hypothetical she had in her brief was, that it automatically goes over to the investigation team.

The filter team is still going to review, and in fact review twice, these documents and make privilege calls based

not just on the existence of search terms, but on a review of the actual document. This concern about things slipping through the cracks is not realistic.

I think it's important to emphasize the incentives again because the privilege holder in any case is going to have an incentive to be overbroad under the assertion of privilege. Where Mr. Cohen is now, clearly, obviously, under a criminal investigation, he is going to have even more incentive to try to slow down our investigation by dragging things out with claims of privilege.

By contrast, the filter team at the U.S. Attorney's Office has every incentive to be conservative in its view of what is not privileged, which is to say, if the filter team determines something to be not privileged and passes it over the wall to the investigative team, the investigative team reads that document.

We have potential problems down the road, potential future litigation about suppression or about taint for the members of the investigative team. Those are things that we take very seriously, and you can look at self-interest. It's not just because we are trying to honor the privilege, though, of course, we are, and, of course, we have an ethical obligation to do so.

It is in the U.S. Attorney's Office's self-interests to be very concerned about those privilege determinations, and

that has a very important practical effect about the amount of litigation that follows and the amount of disputes over privilege that follows because let's say we identify 100 communications between President Trump and Mr. Cohen. It may well be that the filter team for the U.S. Attorney's Office says, you know what, 90 of these are clearly privileged, so let's keep them on the privileged side of the wall and no one ever has to argue about that.

We don't have to confer with defense counsel for the President about those, and eight of these have no relevance to our investigation. Although they might not be privileged, what's the point in arguing with counsel about whether they are privileged so we can pass them over the wall, because they are not relevant, they are not responsive. Those go into the privileged side of the wall and never get passed over.

It narrows the field to only those documents where there is some claim or good-faith claim by the filter team that there is in fact a basis to think this isn't privileged, and these documents are responsive and have relevant importance to the investigative team's case such that it is worth taking the time and the resources and the Court's resources to figure out whether or not this is in fact privileged.

If you put the shoe on the other foot and Trump's counsel is reviewing the privileged documents in the first instance, he has got to account for every single potentially

privileged document. Out of that same set of a hundred, he has got to give us a privilege log of 100 documents.

I think that sort of segues into the other point that I want to make. You started by asking counsel how much time will President Trump be able to devote to this endeavor. She didn't answer the question, but I think the question is obvious. He's a busy man. And defense counsel, I suspect, is not likely going to agree to privilege determinations or nonprivilege determinations without consulting her client. I assume that would be the case.

It's going to be very difficult for her to get the President of the United States' time to consult about a privilege log with 100 items on it. If there are two items in question that the U.S. Attorney's Office has identified, that's going to be much easier to do. So you couldn't get a commitment on the amount of time it would take other than Ms. Hendon said -- I think she literally said it's going to be a long time, and that is the truth.

If it goes that way, if there is a special master or Mr. Cohen or President Trump's counsel is allowed to make the first cut, I think it's going to be an extremely inefficient process, and whatever dates the Court sets are inevitably going to result in requests for more time, more adjournment.

I think just, lastly, I want to come back to what Judge Jones said because Ms. Hendon kept talking about how

privilege logs are done all the time. They are done all the time in response to sentences where we already don't have the documents, where we are trying to get the documents. For reasons that we have set out in great detail in our brief, we determined it was necessary to go by search warrants in this case. There are very good reasons to do that. Judge Jones explained that it's not that we are usurping the privilege holders' right.

The filter team protocol that was approved in that case that's proposed in this case, it honors the privilege. It adequately protects the privilege. But it does so by balancing the privilege against the important public interest in effective law enforcement. Judge Jones describes that in the *Grant* case, and that's really important here because the filter team protocol, we believe, is more efficient than the alternative. We think it honors the privilege, but you also have to consider the law enforcement interest here, an ongoing criminal investigation that is going to get derailed by protracted practice litigation. For that reason, we do think you should rule consistent with common practice in this district.

(Continued on next page)

THE COURT: Does anyone else want to be heard?

MS. HENDON: May I just reply briefly?

THE COURT: Yes.

MS. HENDON: Thank you, your Honor. I just, with respect to things falling through the cracks, I want to be very clear about this and I also want to talk about the Judge Jones case briefly.

Lets start with the Judge Jones case, I think it's Grant. In that case, and it is like a two-and-a-half, maybe three-page opinion. The government searched a nightclub and they searched I think either a personal device or an e-mail account of a gentleman who owned the nightclub, and that gentleman was under indictment or he was a subject of the investigation.

And so, we're talking about radically different factual circumstances. This is where the man worked, so it is a search of his workplace, and it is a search of either his e-mail account or his personal devices.

Now, what flows from that in terms of our discussion today. If I represented Mr. Grant, and the government said let's do a taint review, I could actually sit down with Mr. Grant and say, well, they've got stuff from your business and they've got stuff from your e-mail. Talk to me about is there an in-house lawyer at your business? Do you use outside lawyers? Have you been involved in litigation? And as for

your own personal e-mail or your telephone, who are your lawyers.

You can sit down when you're not talking about a law office. You're talking about a raid of a different place. A bank, a pharmaceutical company, a nightclub, you can actually say to your client, well, looks like the government wants to do a taint review. Can we come up with some search terms and protocols. And because it is your residence, and your e-mail, and your personal device, you might say as the client, you know, it's probably going to be cheaper, and I think the risk of something getting through is de minimus, given I know what the legal activities the business has been active in and I know about my own legal activities. Then let's turn over a bunch of protocols and search terms because, hey, I run a nightclub. I don't run a law firm.

And in that situation, in almost every situation I can think of, other than a law office, you can do that. If you're representing, you know, Merrill Lynch and you get a subpoena, you say, all right, let's get the names of all the in-house lawyers and all the external counsel, and it is Merrill Lynch, it is a huge organization. So if we run these terms ourselves, and make our privilege pull based on the names of lawyers or the names of disputes we've been involved in, that's a good pull. We might miss something, but that's our call. That's what we want to do. We'll do it that way.

And this scenario is true of every single case cited by the government. It is not a law office scenario. It is somebody who is under investigation. It is their business, it is their home, it's their personal effects. And it is not so hard for that individual to make a judgment that here's what we need to know in order for the government to preserve my privilege. I could see consenting on Mr. Grant's behalf to do that. Cost is a concern in these cases, too.

But, when you seize records from a law office, and I'm representing the President now, he didn't make the things inside that office. He's not Michael Cohen's law partner. He doesn't know how they keep their files. Do they make memos. He also doesn't know who does Michael e-mail all day long when he's doing my work. And who of the people that he's e-mailing who might look to a taint team review like a third party, who of those people are actually other lawyers working for me. So it's still privileged even though there's a third party on it.

I haven't once mentioned communications between Mr. Trump and Mr. Cohen because I think the government's briefing says there are none to their knowledge.

THE COURT: Well, only with respect to reviewing e-mails.

MS. HENDON: But, correct. So maybe they've written some -- they've written letters to each other or passed memos back and forth.

THE COURT: Or talked.

MS. HENDON: But we're talking about seizing materials. So there could be a tape recording, your Honor, that's right. There has been some press accounts of that.

But, within a law office, there is so much more potentially privileged material held for a client than just e-mails back and forth or tape recorded telephone calls back and forth with the client.

The other thing that the Court should consider here is that there's been a series of representations made by the government, I defer to them on this point, that Mr. Cohen is a very active businessman and he spends a lot of his time, maybe most of his time on business affairs rather than legal, doing legal work.

Now, I and my colleagues, we're criminal defense lawyers and litigators, and we are thinking about the attorney-client privilege just all day long when we're working and preserving privilege.

One of the things I worry about, and I cast no aspersions with respect to Mr. Cohen who I've never spoken to before saying hello before today.

What if he's gotten on his e-mail and relayed things in e-mail, "the President wants this," "the President's top concern is that," that he had no authority to relay. Now, my client hasn't waived privilege over the communications that are

embedded in that e-mail. My client picked up the phone and said, "Michael, I'd like you to do this for me, it's very important, it has to happen by the end of the day." If Mr. Cohen wrote an e-mail or had some other communication with someone, not my client, in which something my client had relayed to him in confidence gets embedded, you know, my client would want to assert privilege over that.

The problem here is everything is capable of slipping through the cracks. Because unlike Grant and unlike every case in the government's papers, where you're talking about someone's residence or their business or their own e-mail account or their own phone, the privilege holder in this instance just doesn't know what's there. And he doesn't know how his communications with his lawyer have been handled by that lawyer.

And so, if you think about the taint team trying to attack this, the taint team or a special master is even further removed from what actually happened between the attorney and the client. They're even less likely to be able to pick up on what is actually privileged material going out the door in an unauthorized fashion.

So, you know, it cannot be that the privilege holder has to identify every conceivable harm and wrong that can flow from a taint process. But I hope the Court is satisfied by the ones I've proffered when it is a law office, the privilege

holder doesn't work there, doesn't know what's in there, hasn't seen the stuff that was seized. There is a tremendous risk that privileged material will not be recognized as such. It may not be recognized, it may not be recognized as such by me as the president's counsel. But at least in that case I can tell my client, you know, that's on me. We got the documents, the Court ruled for us, and I missed something. But that's on us. That's an issue between him and me. That's not we let the government make these calls for you, and the government is so good at so many things, but they are not best situated or even adequately situated to the task I'm talking about.

THE COURT: But your premise is wrong. They will talk to you and learn from you.

MS. HENDON: But your Honor, I'm telling you I don't know what's in the documents because I haven't seen them, and I don't know how the -- my client doesn't know what was generated inside that firm. There is nothing for me to share with --

THE COURT: May I ask you to use the microphone for the overflow courtroom.

MS. HENDON: I'm so sorry.

There's nothing for me to engage with Mr. McKay on, because as I'm standing here before your Honor, I'm presenting hypotheticals that I hope will persuade you and maybe even the government of the risks here. I'm not describing things I am aware of. I have no knowledge and no way of acquiring

knowledge of what it is I should then go discuss and engage with Mr. McKay on. I have nothing to tell him. Because I don't know how Mr. Cohen ran his office, kept his files, recorded things my client said to him.

THE COURT: You're getting into areas that we really don't need to deal with now. What we need to deal with now is what are the next steps. How do we get this under way.

MS. HENDON: Well, your Honor, I do appreciate that and I thought I was. What I'm addressing is the inadequacy of what the government would like the next step to be.

THE COURT: I've heard you.

MS. HENDON: Okay. May I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MS. HENDON: I have nothing further. Thank you, your Honor.

THE COURT: Thank you. Mr. McKay.

MR. McKAY: I'll be brief, your Honor. The concerns that Ms. Hendon just raised are in large part why we focused in our papers, and I think this focus has been borne out, about the limited nature of Mr. Cohen's law practice.

If you look at the Grant case, yes, it is not the search of an attorney's office. That's why it is important to know that the volume of privileged materials involving Mr. Cohen in actual legal practice is smaller.

Ms. Hendon repeatedly said that she just doesn't know, she doesn't know what's there. She doesn't know how many documents there are. I think that's actually fatal to her argument that this is any different than Grant. As we've said, from the e-mails, from the United States Attorney's Office's search warrants, we know of no communications between President Trump and Mr. Cohen. It may be that this is an exceedingly small set. So it may be that this is just like Grant.

So Ms. Hendon can't really, having not talked to her client, or talked to Mr. Cohen and gotten any actual facts about this, really make the assertion that this is different than Grant because she just doesn't know. She said herself about five times.

The concern that President Trump can't figure out what is in Mr. Cohen's files doesn't seem like a big problem here where Mr. Cohen is sitting at the table, is clearly zealously asserting his client's interest. And I think Ms. Hendon's proposal was that she be consulting with Mr. Cohen's counsel about these privilege determinations. So the question that President Trump can't navigate Mr. Cohen's files rings hollow.

The bottom line point she's making, I understand it to be, that the privilege holder is the only one who can truly honor the privilege. And if that is true, then that is true in every single case where attorney-client privileged materials are seized. It is not just attorneys law offices. It is cases

like Grant where someone has consulted with a lawyer. It is any defendant or suspect or subject of investigation who has consulted with a lawyer in the past.

But that's not how practice works in this district. It is not any single time there is attorney-client privileged communications seized during a search warrant, all the materials get passed back to the privilege holder to make the initial review. That's because having the privilege holder make the initial review is not the only way to honor the privilege. As courts have repeatedly held, the filter team protocol adequately represents the privilege and balances it against the important government interests at stake as well.

MR. HARRISON: Very --

MS. HENDON: May I just --

THE COURT: Yes.

MS. HENDON: Thank you. It's not the case that I or the President couldn't confer with Mr. Cohen and gain insight into how he ran his office and what might be privileged. That's exactly what I'm proposing the Court permit us to do. We certainly cannot do that without the documents.

THE COURT: Well, Mr. McKay, could you remind us all what is still in Mr. Cohen's office.

MR. McKAY: Yes. That the electronic devices or most of the electronic devices. I think the cell phones we have physical custody of. Most of the electronic devices -- and I

hear the back table saying that's not true.

I'll be clear. As I said earlier, because of the pendency of this litigation, I haven't had a full conversation with the taint agents who did the search and seizure. I haven't actually looked at the search warrant returns because we're being very cautious about not letting anyone on the investigative team get into that information.

But to be clear, my understanding is that most of the electronic devices were imaged on site so that Mr. Cohen and President Trump could in fact look at what they have. And to the extent that they don't still have it now, the filter protocol contemplates that if we are designating things between them as not privileged, we're going to provide them with the copies. So at the time that they need to make the determination to weigh in on the question of privilege, they're going to have copies, even if they don't already have it now.

MS. HENDON: The only point I want to make, and then I'll be seated, your Honor, is that the prosecutor keeps referring to every other case, every other case. What happens and what has been done in every other case. And this is just isn't those cases.

We stated very clearly in our papers that there is no case that presents the facts of this one. This is an extraordinary case. This is a case of first impression for this Court.

The fact that there have been taint teams agreed to or put in place in other matters simply means that taint teams are sometimes used. That is not authority for the Court deciding the particular question here, which is whether a taint team can vindicate the privilege -- pardon me, which is whether, where a privilege holder asserts the right to perform the first review of materials seized by the government from his lawyer's offices, the Court may direct instead that government agents do so. Thank you.

THE COURT: Thank you.

MR. HARRISON: Very, very briefly, your Honor. Three things. One is Mr. McKay said a couple times we have access to all the electronic media, we don't. We simply don't. I don't know if your Honor --

THE COURT: What do you have access to?

MR. HARRISON: Not much, Judge. Mr. McKay said -- I encourage the Court to look at the search warrant returns and see there is a number of cell phones, a large amount of cell phones as Mr. McKay said. There is also a bunch of drives, electronic drives that were taken that we don't have.

Two, Mr. McKay said several times that we were going to be inefficient if the Court allows us to do it. The one example of something that's happened so far in this case is I think we're pretty efficient. We filed our papers on Thursday evening, we showed up in front of the Court on Friday at 10:30.

The Court ordered us to do something, we did it over the weekend and we've resolved those issues by Monday.

If the Court allow us and the privilege holders to have the materials, to have copies of the materials and do the first cut, we'll do a similarly efficient job.

THE COURT: There is no question but you're going to get a set of the materials. But you're not going to take away what the government has. Go ahead.

MR. HARRISON: We have never suggested that we should take it. They should obviously keep, however you want to describe, the master copies. But I think the privilege holder should get to do the first cut. It is not quite clear, Mr. Cohen is the privilege holder also for some of these documents and communications we believe. I think we've made clear. He was the client for certain attorneys and we put that in our papers.

Lastly, Judge, I'll just say there has been good arguments made here today. The balance of the equities we think should be with the American citizen whose stuff was taken. That's been swept up in a search warrant.

The privilege holders know and the lawyer in this instance know the documents best. Know the relationships best. Know which relationships are privileged and which are not. We're really best placed to look at these materials. There is no exigency problem. As the Court pointed out, the

government's already got the documents. They're not going to go anywhere, and I think that's the best way to approach this, your Honor.

THE COURT: Thank you. Would anyone else like to be heard on this?

MR. McKAY: Just one last point, your Honor. The American citizen whose materials were taken was someone who a magistrate judge found probable cause that he had evidence of crimes in his possession.

The efficiency example that they moved quickly over the weekend, I would debate that they answered your questions fully by this morning. But in any event, their incentive this weekend is they want a TRO to stop the government review. The second the review is stopped and a special master or whatever other remedy the Court orders takes place, their incentive flips. Their incentive is to delay an ongoing criminal investigation.

THE COURT: All right. Would anyone else like to be heard?

MR. FUTERFAS: Good afternoon. Very briefly. I'm not going to weigh in on the able arguments of my fellow counsel here, whether your Honor approves of a special master or approves the proposal suggested by Ms. Hendon.

On the Trump Organization's side, all we request is that we at some point be afforded a copy of the Trump

Organization related materials, whether we get it from the government, whether we get copies made from Mr. Cohen's firm or Mr. Ryan's firm receives. And the reason we want them, obviously, is because we can go through, and quite frankly, we can help the government make privilege determinations. And we can weigh in, whether it is the special master or whoever is going to take the charge based on the procedure and the protocol that your Honor finally puts in place.

The reason I say that is Mr. Cohen worked within the Trump Organization for 10 years. He touched all kinds of matters. There were negotiations, litigation matters, IP, intellectual property matters, a whole range of things for the course of 10 years. Mr. Ryan has asserted to your Honor that there are Trump Organization materials that were seized or found in his possession at the time. Okay. And all we want to be able to do is weigh in with whoever is going to be making those privilege determinations pursuant to your Honor's direction, whatever process or procedure your Honor puts in place. Because those can be complicated.

Just giving you a quick hypothetical. If Mr. Cohen, for example, is sending an e-mail to an individual, the government may not realize or the special master may not realize or whoever is doing this initial cut, so to speak, may not realize who that individual is. Is that individual co-counsel in another case, are they a lawyer in a different

firm that has a common interest privilege. Are they a limited partner in a deal that's potentially covered by the attorney-client privilege. I mean, there are so many different permutations that could occur, and without having some basis of knowledge to assist whoever is making that determination, we want an opportunity to weigh in and say here's the body of material that related to our company that was found at Mr. Cohen's office, we go through it, we look at it, we make our own determination, and then whoever we have to interface with, whether it is a special master, whether it is your Honor, whether it's a taint team, whatever it is that your Honor eventually determines is the process, we just want the opportunity to do that.

And I think it is also for that reason that we do, and I stated in my letter of this morning, we do obviously support the idea, either of the ideas suggest by Ms. Hendon or the proposal made by Mr. Ryan and his firm, that they get the materials and they do a cut of the Trump Org materials, send it to us, we could then weigh in, and we think actually that would greatly expedite the process.

If the government has to look at a piece of paper and try to figure out who is the individual on the other side of that e-mail, are they a lawyer, are they a doctor, are they a friend, who are they, where do they fit in, that's a very time-consuming job that the government will have. We could

actually kind of help that process forward, whoever we're dealing with.

And that's all I would add, your Honor. Thank you.

THE COURT: Thank you. Does anyone else wish to be heard? All right.

I have faith in the Southern District U.S. Attorney's Office that their integrity is unimpeachable. I think even Ms. Hendon, who worked there at one time, agrees. So I think that a taint team is a viable option.

In terms of perception of fairness, not fairness itself, but perception of fairness, a special master might have a role here. Maybe not the complete role, but some role.

My interest is in getting this moving efficiently and speedily. So what I'd like to do is first have us reconvene when the government has finished its designation of everything and can hand over to opposing counsel copies of it. I don't know, Mr. McKay, if making copies and handing it over is a time-consuming process. So, I'll leave it to you to tell me when we should next convene.

MR. McKAY: Your Honor, it may be that, as I mentioned, I haven't talked in detail to the filter team or filter agents about the specifics in terms of number of devices and volume. So it might be that I should go back, have that conversation, and then write in to the Court with a more precise estimate of how quickly we would have copies of

everything.

I would, as I mentioned earlier, I suspect it is going to be the case that we would be able to do this most efficiently on a rolling basis. Probably be able to give the large majority fairly soon, and there may be a few devices that are more difficult to extract that would take longer. We wouldn't want to hold the process up for those devices. So it may that be we say we're going to have a large majority in a week and then the rest hopefully two, three weeks, whatever the case may be. But we can provide the Court with a more specific estimate.

THE COURT: Thank you. And my view is that we would meet at that point, we would know the volume of the documents, opposing counsel will have seen the documents and other items, and we can make a much more intelligent choice of whether the government taint team should handle this or whether a special master should handle part of it.

And I would want opposing counsel to move very fast in terms of, if you're getting things on a rolling basis, I would want you to keep up with the government just as I would want the special master to keep up with everyone, if there is a special master.

What I envision is sort of a test. As soon as you've seen the documents, I'll want to hear your proposals for how we can move fast.

MS. HENDON: May I ask a question, your Honor?

THE COURT: Yes.

MS. HENDON: Is your Honor ruling against Mr. Trump's application for a TRO?

THE COURT: I was about to --

MS. HENDON: And preliminary injunction?

THE COURT: I was about to get to that.

I'm denying the motion for a TRO because it's currently moot. The government is not accessing anything, other than to copy it and number it for you.

With respect to a preliminary injunction, that I think is premature at this point. We have to wait and see what the volume is and how you can argue.

MS. HENDON: Okay. So your Honor, just so I'm very clear on what I'm going to be doing in the next 24 hours. Your Honor has denied the TRO, but you have not denied the preliminary injunction.

THE COURT: Right.

MS. HENDON: And may I request two things. That your Honor please either confirm with the government that they will continue to not -- to agree voluntarily not to review the material, other than pulling it together for the parties, and two, that the material be provided in a reasonably accessible and readable manner. Because I and my partners have received, you know, productions of forensically imaged material that it

then takes us three weeks and the hiring of technical experts to sort of open up and extract data. This is a very big problem.

THE COURT: I hear you. And I think Mr. McKay will need to go back and talk to his people with respect to what he'll be able to give you.

But on the first point, Mr. McKay, how do you respond?

MR. McKAY: Yes, your Honor. So, we are not going to start reviewing the documents substantively during the pendency of these proceedings while we await your determination. So as you said, the TRO is moot from that respect.

THE COURT: Yes.

MR. McKAY: Though I just want to clarify our ability to do a few things so there is no suggestion that we've breached that agreement.

The first is, of course, for the purpose of actually getting all these documents in the database and in a place where we can give them to counsel, we're permitted -- the filter team is permitted to scan the physical documents into our database and take the electronic documents and put them all into the database. This doesn't contemplate substantive review, just the mechanical process of getting this in a format where everyone can easily read it.

THE COURT: Okay. I think that's reasonable and meets Ms. Hendon's concern, I hope.

MS. HENDON: It does, your Honor. I just add one thing because I don't know this for a fact, but it may be likewise difficult and costly for the government to take the various media they've seized and put it into reasonably accessible format for us.

I would just suggest as an option for the government's consideration, if they have the data, if they decide to sort of have the data up on a site for their own review, there are ways to make others have access, with walls all in place, to that same website or database. This is entirely up to the government, but it would alleviate their need to be pulling apart forensic images for us. If they have it uploaded in a nice way where you can search and read documents and they're willing to give us access, that's fine with me.

MR. McKAY: Your Honor, we'll speak to counsel about the most efficient way, system-wise, to give these documents to them.

But one related point regarding the scope of our ability to manipulate these documents at this point is that I take the Court's direction to be we should be providing a copy of all of the documents seized from Mr. Cohen to Mr. Cohen.

THE COURT: Yes.

MR. McKAY: With respect to President Trump, I think we would object, and I suspect other clients of Mr. Cohen might object to us producing documents that are either personal

documents of Mr. Cohen, or documents relating to other clients to President Trump. It is often the case where we produce a subset of seized documents to the individual that is affected by that subset of documents. And I think that might be particularly useful here, not just because of privacy interests involved for third parties, but also because I took from the back and forth earlier that one possible route the Court was considering was employing a special master for the specific purpose of reviewing documents, communications that might potentially be attorney-client privilege as to President Trump.

So, I think if that's an option the Court is considering, having the special master focus on that universe of documents as opposed to all of the documents seized during the searches, it would be important for us in the process of production to try to determine what the field of documents that could be turned over to President Trump is. So that not only, like I said, we're protecting the privacy interests, but also Ms. Hendon can make a more accurate assessment of what the privilege log turnaround time for her would be.

There has been a lot of discussion here, it may be that's actually a very small number. And so if it's really truly very small, it is going to fundamentally alter the debate from a circumstance where we've given everything to President Trump, and now we're not sure what the volume that applies to him is.

THE COURT: What is the best way to sort that out. Would it be for Mr. Cohen to decide what to share with others?

MS. HENDON: That is what we urge the Court to permit. I do not want the government doing anything to segregate documents of Mr. Trump while we're in this initial very modest phase of working with the Court on how we get to the end of phase. If you understand my point.

I think all we're doing now is get a full set of the materials in a readable, searchable form to Mr. Cohen. The government has agreed not to search or review any of the materials. I will work with counsel for Mr. Cohen to ensure that I receive documents pertinent to Mr. Trump's applications. I do not want the government taking any steps to make cuts like that, please.

THE COURT: Do you wish to be heard?

MR. HARRISON: Yes, your Honor. I just join Ms. Hendon in that application. It sort of makes sense, we can get stuff back and we know working with the privilege holders how best and quick to get it back to them.

THE COURT: All right.

MR. McKAY: Your Honor, our concern with that is that if we come back in two weeks, whatever the case may be, and we -- I guess I'm confused about what Mr. Cohen's proposal is in terms of what will happen. He is, once he gets the copy, going to make his estimate of how many of those could properly

be provided to President Trump?

THE COURT: I believe that's the proposal.

MR. HARRISON: In close consultation with Ms. Hendon for Mr. Trump, yes.

MR. RYAN: And T.O. We'll do it with all of the organizations, your Honor. We will make that determination and we agree that the government won't be searching for that. And if they give us the material 10 days from now, as soon as we can begin the review, after that, we'll begin to turn it over on a rolling basis to the other organizations, and we can prioritize as well.

THE COURT: Roughly how many hours a week are you prepared to spend, the law firm?

MR. RYAN: I think it really depends -- I am assuming it is going to take 10 days, based on the representation the United States Attorney's Office made before they flow us the first set of materials. If it's shorter, we'll begin work shorter. I think what happens is, when we see what we've got, and the volume, first of all, that will be very helpful to understanding how difficult the task is or how much labor would be necessary.

But, candidly, the technology has changed so much that there are many things we can do. We have a discovery center. We are 1,000 lawyers. We have a discovery center that are skilled in these kind of activities. And a boutique law firm

would not have that technology array. They have the better brains perhaps, but not the technology array that we have.

So we'll work this as hard as we have to, to satisfy the Court that we are giving it all of the energy that the Court would direct us to do.

So, I would say that if you schedule your hearing to talk more about this, that you do that giving us at least 10 business days post the time, so we can come in and give you an interim report on that. We'll in that 10 business days only begin to flow it to T.O., to Trump Organization or the President, President's counsel, you know, maybe the eighth day before we can turn stuff over to them that they can start looking at. And I think we could, you know, if the Court wants to do this in a graduated fashion, I think we can meet the Court's needs and convince the Court that we're working expeditiously on this.

THE COURT: I'm wondering whether you should meet again to consider search terms. Meet and confer to try to get a set of search terms that can speed all of this up.

MR. McKAY: Your Honor, I think it would make sense to do this in parallel. Which is to say, we can speak, we will expeditiously create copies of all the material and get it over to Mr. Cohen's counsel. Once they have it, they should be given a very prompt turnaround. They have 1,000 lawyers, they have lots of resources to make their estimate of what the

universe of documents is that should be provided President Trump for his review, what the universe is to the Trump Organization, to any other clients they wish to identify.

But in parallel, I think, in fairness, we should be able to have the filter team run a purely mechanical search term evaluation so that we're not left trusting, with respect, trusting their estimates of the volume of materials. Which is to say our filter team would run simple mechanical keyword searches to see, for instance, how many to from e-mails involve a particular client. Or how many times a particular search term or series of search terms hit on a particular client.

Then, when we come back to court shortly thereafter, we've got an estimate from Mr. Cohen's counsel, an estimate from the government, of what the volume of each subset of documents is. We may not agree, I'm sure we won't because our search terms may differ slightly, and we can discuss what appropriate terms would be. But I think it make sense to have two estimates and I think what I'm proposing is mechanical. It is not our review team going through documents and making substantive determinations of privilege. It is trying to get a sense of how many e-mails with President Trump, how many documents that will hit on search terms that are indicative of privilege.

When we're back in court, we can make a more educated determination of should a special master be appointed at all or

should it be appointed for some subset of the documents.

THE COURT: Thank you.

MR. HARRISON: Just --

THE COURT: Have your teams had a chance to consider names of special masters? I know that Mr. Harrison said last time he already had someone in mind.

MR. RYAN: Could we do that tomorrow? Submit the four names to you? I think we need overnight to do that.

THE COURT: All right.

MS. HENDON: Your Honor -- I'm sorry, Mr. McKay. I don't on behalf of the President consent to the government running mechanical searches. It seems the argument is that they want to do that so they can trust the credibility of representations that are being made by, I don't know, the law firm --

THE COURT: No, I don't think so. They're doing it to estimate the amount of time needed.

MS. HENDON: But, well, I heard something different, your Honor. I'm not saying it is an improper concern for the government to have necessarily if they want to say that. But I don't consent to mechanical searches designed to pull up volume numbers of documents that might relate to Mr. Trump or not.

THE COURT: If no one is reading them, I don't think that your objection is well taken, so I overrule.

MS. HENDON: Can we get an agreement on just

confirmation -- I'm not sure what a mechanical search is, your Honor. I do searches so that I can pull up subsets of documents for purposes in my work.

THE COURT: So I'll ask Mr. McKay to describe it.

MR. McKAY: So, in the database we have, we can search, for example, if it is just e-mails, we can search any e-mail to and from JudgeWood@UScourts.com. And that will say, oh, there were 332 e-mails exchanged with Judge Wood.

With documents, it is a little more complicated. But you can use -- because you don't have a to from header that so easily sorts. You can still use search terms that whenever a document hits on that search terms, you can create statistics for how many responsive hits you get. You plug in the search terms and up comes the responsive list, and then the program records that number.

THE COURT: All right. And with respect to search terms, it seems to me that it might be helpful for the government to tell opposing counsel what you propose and see if they, within 24 hours, want to propose something else.

MR. McKAY: Right. And that would be, again, search terms specific to individuals or entities with whom there is some reason to think there may be an attorney-client relationship. So right now I think we've got four.

MS. HENDON: Your Honor, that's over our objection. And I'm sorry, your Honor. I just lost my train of thought.

THE COURT: Take your time.

MS. HENDON: Yes.

THE COURT: Take your time. You can stand up again.

MS. HENDON: I will, thank you.

I'm sorry, your Honor. I remember what it was. I don't think those numbers that are generated, volume of documents for a particular privilege holder should leave the taint team. I think that should be shared with --

THE COURT: I'm sorry. I'm not sure I understand what you're saying.

MS. HENDON: I don't think the investigative team should be told -- I assume these searches are going to be run by the taint team.

THE COURT: Yes.

MS. HENDON: I don't think the investigative team should be told what the volume of documents is that are pulling up a Trump --

THE COURT: You don't intend to do that, do you?

MR. McKAY: No, we do.

THE COURT: To give it to the investigative team?

MR. McKAY: Yes.

MS. HENDON: He is the investigative team, your Honor.

MR. McKAY: There is nothing privileged about a statistical random -- computer-generated number of how many e-mails there are in a database. There is nothing privileged

about that. It is the same concept as why an attorney-client list is not privileged.

THE COURT: That's not privileged. I'm just wondering how useful it is at that point.

MR. McKAY: I think it is only useful to the extent that what we're trying to decide is volume for purposes of appointing a special master. Obviously if there is 1,000 hits to a particular search term, that doesn't mean there is 1,000 privileged documents. It just means we're giving President Trump 1,000 documents, and so now we know how long it is going to take Ms. Hendon to do her privilege review. If it is 20,000 documents, now we know we might have a different story.

THE COURT: Right.

MS. HENDON: I just note my objection to this, your Honor. Thank you.

THE COURT: Okay.

MR. HARRISON: Mine too, Judge. I would say the proof will be in the pudding. It will all come out in some way at the end. I don't know it is necessary.

THE COURT: I'll allow the government to do it over objection. All right.

So you'll have each have four names for me of a possible special master, and I'm not deciding now that I'll appoint one. But I'd like to have in mind who might have enough time if we need to appoint one.

MR. RYAN: Yes, ma'am.

THE COURT: One moment.

The parties have disputed whether the search, well, I think the press disputes whether the search warrant should be sealed. I think I ruled on it last time. But I would say that I haven't seen anything to change my ruling that the warrant and the portions of the application need to remain under seal in the interest of allowing the prosecutors to do their work expeditiously, and not to embarrass or taint individuals who are innocent.

MR. BALIN: Your Honor, may I just respond that I will consult with my clients about whether they want to make a written application or not?

THE COURT: That's fine. Thank you. All right. Is there anything we should take up?

MR. McKAY: Your Honor, can I just make sure I have crystal clear the next step now, which is that we're going to, first of all, the U.S. Attorney's Office will confer with the filter team and the folks at the FBI who have the ability to give us a better estimate of the volume. And we're going to write to the Court with our best estimate of how soon we can have copies over to Mr. Cohen's counsel. And we're happy to do that by I think perhaps either end of the day tomorrow might be a good deadline or perhaps even early Wednesday.

THE COURT: All right. Early Wednesday certainly

sounds soon enough.

MR. McKAY: Okay. And in the interim, we're happy to put in that letter our proposed names for a special master and we'll do that.

And the last thing was just I suppose we should meet and confer with defense counsel about potential search terms. And we can do that before we file our letter on Wednesday. And to the extent that any issues may arise out of that, we'll notify the Court.

THE COURT: All right. And then when all counsel have decided it will be fruitful to meet, you will let me know.

MR. McKAY: Yes, your Honor. And I guess we'll confer with defense counsel about that as well, and hopefully we can propose a date.

THE COURT: Okay. Is there anything else we should take up? All right. Thank you very much. We are adjourned.

(Adjourned)